IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 409 OF 1995

Shri Suresh Sumermal Bafna ..Petitioner.

V/s.

The State of Maharashtra ..Respondent.

Miss. S.M. Dandekar for Petitioner.
Shri V.B.Konde-Deshmukh,APP for Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 18, 2005

PC :-

1. The petitioner in this petition has taken exception to the process/ summons issued by the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay in case No. 132/P/1995 registered with GB CB CID, read with case No. MECR No. 74/1992 against the petitioner, accused No.5. The petitioner was not originally named as accused in the private complaint filed by one Umesh Chagpal Karia. However, as the matter was investigated by the police in terms of the directions given by the trial court; and it transpired that some material is collected during the investigation, indicating the complicity of the petitioner herein, the petitioner has been named as

accused No.5 in the police report, which has been filed before the trial court. It is on that basis, action was initiated against the petitioner herein. Therefore, the present petition questions the correctness of the criminal action against petitioner on the argument that no case is made out against the petitioner.

2. As charge-sheet has already been filed before the trial court alongwith the material collected during the investigation; and in the companion cases, the petitioner(s) have agreed to approach the trial court with appropriate application for discharge, even this petition deserves to be disposed of on the same terms by permitting the petitioner to approach the trial court by way of discharge application, which will be considered by the appropriate court on its own merits in accordance with law. The petitioner is agreeable to this course. This course has been adopted having regard to the fact that the entire record has been produced before the trial court alongwith the charge-sheet and the question whether any case has been made out against the petitioner, can be efficaciously decided by that court.

3. Accordingly, this petition is disposed of on the same terms as in the companion criminal Writ Petitions Nos. 1264/1993 and Cri.W.P. No. 1261/2000, which have been disposed of today by a separate order, pertaining to the accused Nos. 1 and 2 respectively.

4. In this case it is seen that there is no order, atleast brought to my notice, granting bail to the present petitioner. In such a situation, as the petition is being disposed of with liberty to the petitioner, as aforesaid, the limited protection needs to be granted to the petitioner, so as to enable him to approach the appropriate court for necessary interim protection, as may be advised.

5. In the circumstances, the petitioner herein not to be arrested for a period of four weeks from today to enable him to take out appropriate application for interim protection as may be advised, which will be decided on its own merits in accordance with law.

6. Accordingly, the petition is disposed of in the above terms.

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